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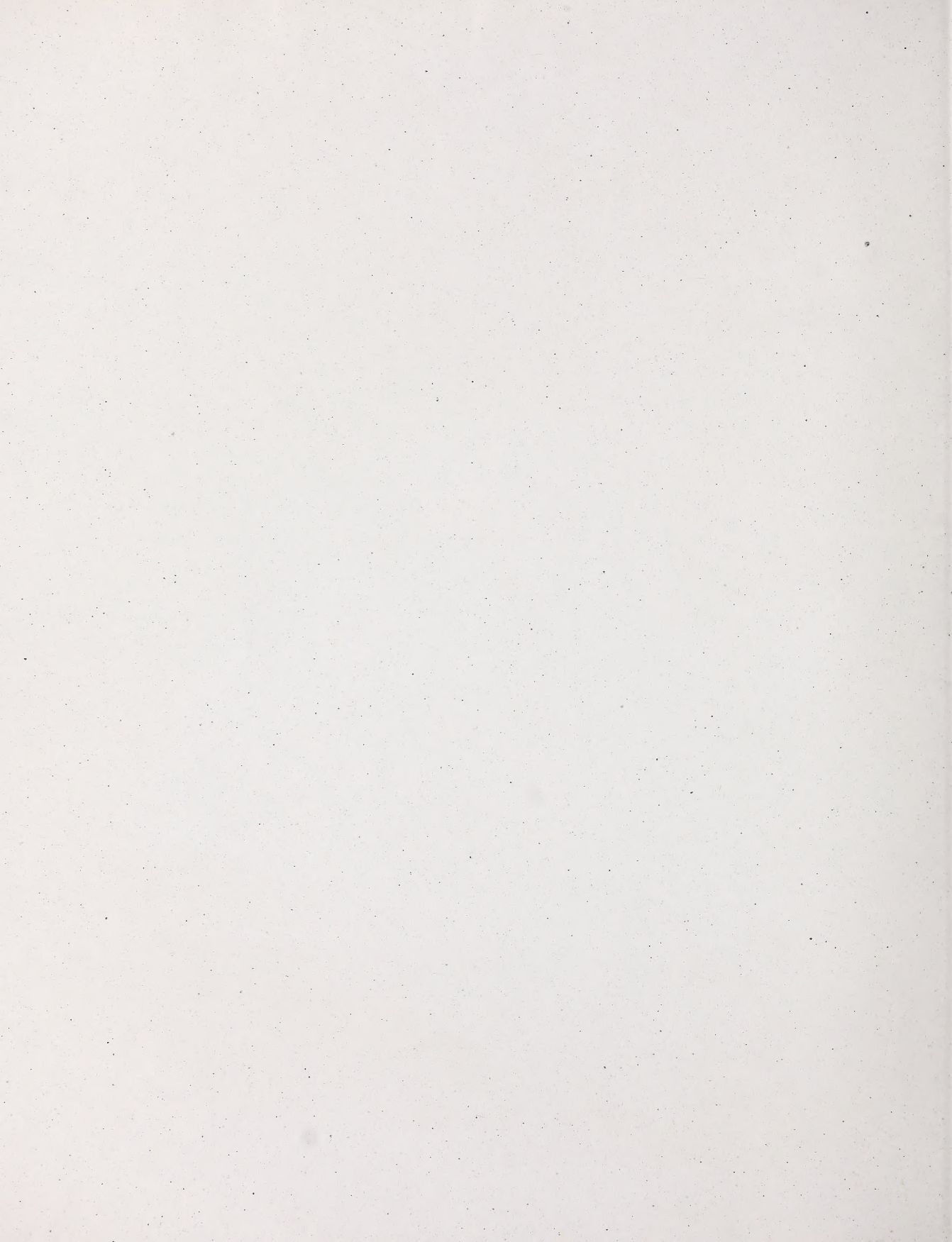
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**Office of the Information
and Privacy Commissioner**

Annual Report 1995 - 96





Office of the Information
And Privacy Commissioner

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April 30, 1996

Honourable Stanley S. Schumacher, Q.C.
Speaker of the Legislative Assembly
325 Legislature Building
10800 - 97 Avenue
Edmonton, Alberta
T5K 2B6

Dear Mr. Speaker:

It is my honour and pleasure to submit to you the Annual Report of the Office of the Information and Privacy Commissioner, covering the six-month period from October 1, 1995, to March 31, 1996.

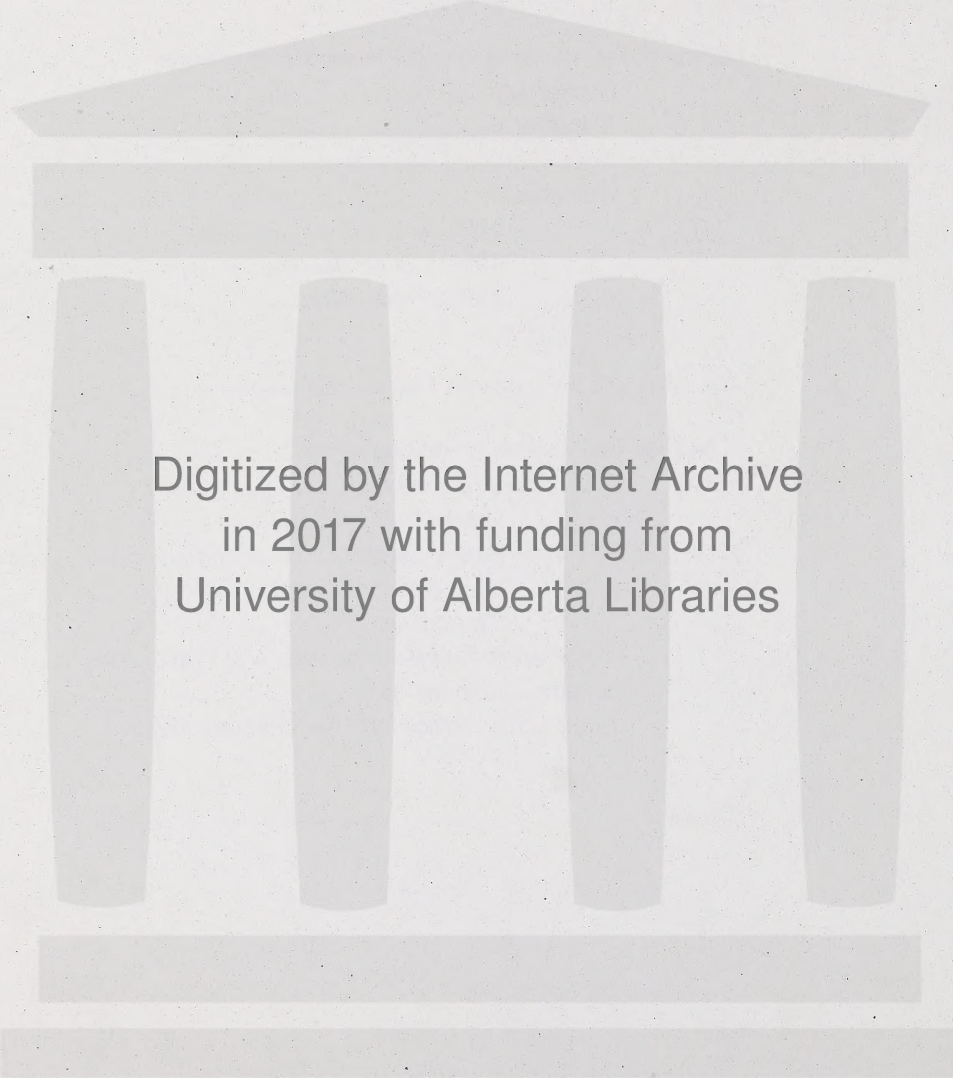
This report is submitted under section 61(1) of the Freedom of Information and Protection of Privacy Act, Chapter F-18.5 of the 1994 Statutes of Alberta.

Yours truly,

Robert C. Clark
Information and Privacy Commissioner

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"Think globally, act locally."

With this objective in mind, the Alberta Office of the Information and Privacy Commissioner officially opened on October 1, 1995.

It has been a busy six months. Although I have had responsibility for performing a broad range of functions relating to access to information and protection of privacy issues under the *Freedom of Information and Protection of Privacy Act* (the Act), national and international issues have also had an impact on my role as Information and Privacy Commissioner. I am mindful of the repercussions from recent events such as the alteration of documents in the Somalia scandal and the announcement that the European Union will refuse to trade with any country not having an equivalent privacy protection standard.

During this six-month period, the Office of the Information and Privacy Commissioner has logged eighty-two cases, including requests for advice and recommendations under the Act, requests for review of decisions of public bodies relating to access to information, and complaints relating to privacy issues, as well as other matters. Of the twenty-four cases closed by March 31, 1996, only two inquiries have been held. The fact that only two cases have proceeded to inquiry reflects the skill of the two Portfolio Officers in investigating and mediating disputes.

A few comments need to be made about the inquiry process and my orders as Commissioner. First of all, any arguments at the inquiry stage need to be based on the principles of the Act, common sense and what's fair and reasonable. I will not make decisions solely on the basis of how much it costs a public body to release information. Secondly, although I am aware of decisions of Commissioners in other jurisdictions, my decisions will reflect the unique Alberta situation. Finally, in order to establish a standard for determining whether it is in the "public interest" to waive fees on a request for information, I have set out initial criteria in my second order released on March 22, 1996. However, I have also determined that the Act gives me a discretion equal to that of the head of a public body in excusing fees.

As this office anticipates the future, my staff continues to research emerging privacy issues, such as a permanent voters' list, the Canadian Bankers' Association Model Privacy Code, DNA databanks, and health cards. This latter issue is of particular importance as this office begins its task of working with the Department of Health, regional health authorities and health care providers to develop systems of assessing the privacy impact of proposed programs and legislation. It is vital that public bodies be conscious of privacy issues.

Furthermore, this office has a mandate to educate the public about access and privacy issues. I will personally press the need for education and be part of that process by taking on public speaking engagements. Education will help members of the public to become aware of privacy issues in particular, and to ultimately become their own privacy watchdogs.

In closing, I wish to thank Alberta Public Works, Supply and Services and the Freedom of Information and Privacy (FOIP) Coordinators in the various public bodies. Their preparation for and compliance with the requirements of the Act have been appreciated.

I also want to acknowledge the superb efforts of my staff in starting up this office and to thank them for their diligence on a day-to-day basis. Frank Work, Director and General Counsel, deserves a special tribute, as he has guided this office from its inception to its present dynamic state.

Keeping our minds tuned to the rest of the country and to the world, my staff and I will continue to develop a made-in-Alberta approach to today's and tomorrow's access to information and protection of privacy issues.

Accomplishments

Interpretation of Legislation

- Established a “harm” test for determining whether disclosure of information is harmful
- Established initial criteria for determining the meaning of “public interest”
- Developed a privacy impact assessment scheme
- Developed a procedure for settling requests for waiver of fees
- Prepared an annotated Freedom of Information and Protection of Privacy Act

Education and Public Relations

- Answered 1,735 telephone enquiries from the public
- Spoke to the following public bodies and organizations:
 - Alberta Council on Women’s Shelters
 - Grant MacEwan Community College
 - Southern Alberta Council of Public Affairs
 - Calgary Public Library
 - Kiwanis Club of Olds
 - Alberta Health Council
 - Government of the Province of Mpumalanga, South Africa
 - Canadian Public Personnel Management Association
- Held meetings with:
 - Consumers’ Association of Canada
 - College of Physicians and Surgeons
 - Canadian Police Information Centre
 - Alberta Pharmaceutical Association
 - Telus
- Held a public hearing in a high profile case that was initiated by an elected official
- Encouraged the private sector to consider having its own privacy commissioner
- Prepared and widely circulated two brochures

Working Relations and Cooperation

- Held an open house for FOIP Coordinators and regularly attended FOIP Coordinator meetings
- Met with the Ombudsman and staff members
- Liaised with the Information and Privacy Offices of Ontario, British Columbia, Australia, New Zealand, the United Kingdom and the Netherlands
- Undertook to assist in a series of policy reviews involving those public bodies that have a central agency role (Health, Education, Advanced Education and Municipal Affairs) over large sectors of local public bodies
- Developed effective cooperation with the Post-adoption Registry and the Department of Family and Social Services, for the purpose of assisting adoptees who are searching for precise records about their birth and early life

Research

- Responded to a proposal, made by the Chief Electoral Officer, to create a permanent voters' list based on records in existence and census data. Recommended that no telephone numbers be included on the voters' list
- Responded to a proposal, made by the Solicitor General for Canada, to establish a national DNA databank for convicts. Cautioned about the opportunities for abuse of such data
- Prepared a research paper about privacy issues related to the use of health cards in the health care field
- Researched privacy codes throughout the world

Background

The Alberta Freedom of Information and Protection of Privacy Act (the Act) received Royal Assent on June 1, 1994, although most of the Act did not come into force until October 1, 1995. Robert C. Clark was appointed Information and Privacy Commissioner on June 1, 1995.

The Director and General Counsel for the Office of the Information and Privacy Commissioner (IPC) was hired on June 15, 1995, and IPC was staffed by September 1995. Given that it was impossible to predict whether the greater demands on the office would come from requests for reviews by the public or from requests to comment on legislation and programs, the decision was made to hire as few permanent employees as possible.

IPC was physically set up by August 1995, at a minimal cost. Rather than renting new space, IPC occupied space to which Government had an existing commitment. Significant cost savings were also realized by obtaining furniture from government bodies that were either being phased out or amalgamated.

IPC presently shares office space and some staff functions with the Office of the Ethics Commissioner. This has resulted in cost savings to both offices. However, it is emphasized that IPC and Ethics functions are otherwise kept strictly separate, and confidentiality in Ethics matters is strictly and completely preserved.

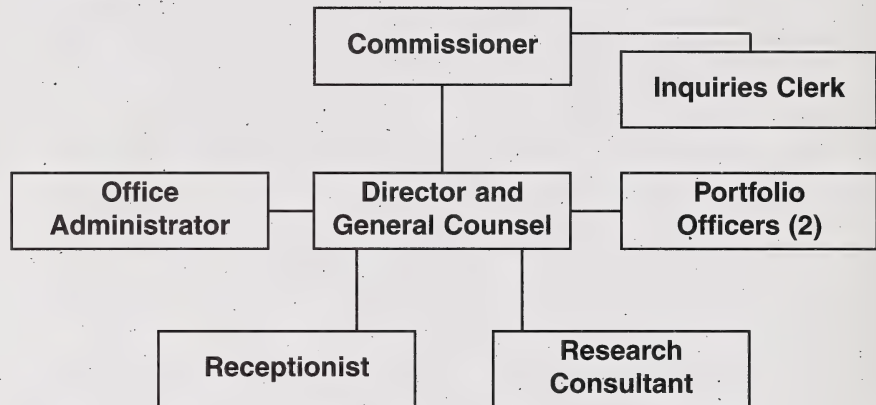
Mandate

Under the Act, the Commissioner is responsible for performing a broad range of functions. Section 51 is not exhaustive, but sets out a number of these responsibilities:

- conduct investigations to ensure compliance with a provision of the Act or compliance with rules relating to the destruction of records set out in:
 - (a) any other enactment of Alberta, or
 - (b) a by-law or other legal instrument by which a local public body acts
- make an order described in Section 68(3), whether or not a review is requested
- inform the public about the Act
- receive comments from the public concerning the administration of the Act
- comment on the implications for freedom of information and protection of personal privacy resulting from proposed legislative schemes or programs of public bodies
- comment on the implications for protection of personal privacy resulting from using or disclosing personal information for record linkage
- authorize the collection of personal information from sources, other than from the individual about whom the information relates

- bring to the attention of the head of a public body any failure to meet the prescribed standards for fulfilling the duty to assist applicants
- give advice and recommendations of general application to the head of a public body on matters respecting the rights or obligations of a head under the Act

IPC Staff



Objectives

1995: Start Up

The start-up objectives of IPC were to:

- establish and staff an office capable of discharging IPC's legislated mandate
- develop a relationship with the public bodies that are immediately responsible for providing access to information
- develop a role in the planning of Government programs and policies having privacy implications
- make contacts with other Information and Privacy Commissioners in Canada, particularly those with similar mandates (Ontario and British Columbia)
- develop and begin to implement a communications strategy to make Albertans aware of the Act, their rights under the Act, and privacy issues that affect Albertans

To date, IPC has developed good relationships with FOIP Coordinators of the public bodies presently required to comply with the Act. Nevertheless, IPC has emphasized its independence, which is crucial to its role in reviewing the decisions of the heads of public bodies.

IPC has also developed excellent consultative relationships with public bodies that undertake programs or policies having privacy implications. This is a labour-intensive role, which requires that IPC have involvement in and keep pace with programs and policies as they develop. IPC wishes to foster a consultative, rather than a confrontational, role in this process, and does not want to merely offer criticism or comments after programs and policies have been developed. As an example of its consultative role, IPC currently advises the Health Information Network Committee and the Information Technology Committee of Cabinet. Early and continuous involvement in the planning stages of such programs appears to have resulted in the planners taking access and privacy concerns into account in the "architecture" of the programs.

Furthermore, contacts with other Information and Privacy Commissioners have been developed, and IPC has learned from observing how those Commissioners have set up and are running their offices.

Finally, drawing upon the expertise of consultants, IPC is finalizing its communications plan for the next two years. This plan will guide IPC in informing Albertans about the Act, their rights under the Act, the role of IPC, and privacy issues of which the public should be aware. Communications are critical to the mandate of IPC.

1996: Consolidation

The 1996 objectives of the IPC are to:

- review public body decisions on requests under the Act, within the time limits legislated
- maintain awareness of and keep pace with government programs and policies that have access and privacy implications, as such programs are developed
- implement the communications strategy
- develop the skills required to conduct compliance investigations
- consult with government and administration about proposed legislative schemes that have access and privacy implications

To accomplish the objective of implementing the communications strategy, IPC has hired a writer/researcher, on contract, for the 1996 budget year. In keeping with its statutory mandate, IPC also plans to print and distribute public literature, and to travel within the province to speak to the public.

IPC will also be hiring two additional Portfolio Officers to share the caseload of requests for review and to be involved in compliance monitoring.

It will be necessary to consult with experts in privacy issues and with persons having expertise in areas related to proposed legislative schemes or programs, such as computerized information systems. Furthermore, comparable jurisdictions, subsequent to start up, have experienced an increase in applications for judicial review of questions that can only be answered by the courts, making it necessary to obtain legal services for those applications.

1997: Preparation

The objectives of IPC for 1997 are to:

- prepare for local public bodies (the “MASH” sector: municipalities, academic institutions, schools and hospitals) coming under the Act
- continue to deal with requests for review in a timely way
- continue to monitor access and privacy implications of legislative schemes and programs
- participate extensively in the required review of the Act
- conduct more compliance audits

The exact date that the local public bodies will come under the Act is not known. However, IPC anticipates that it will need to have a solid core of experienced Portfolio Officers to:

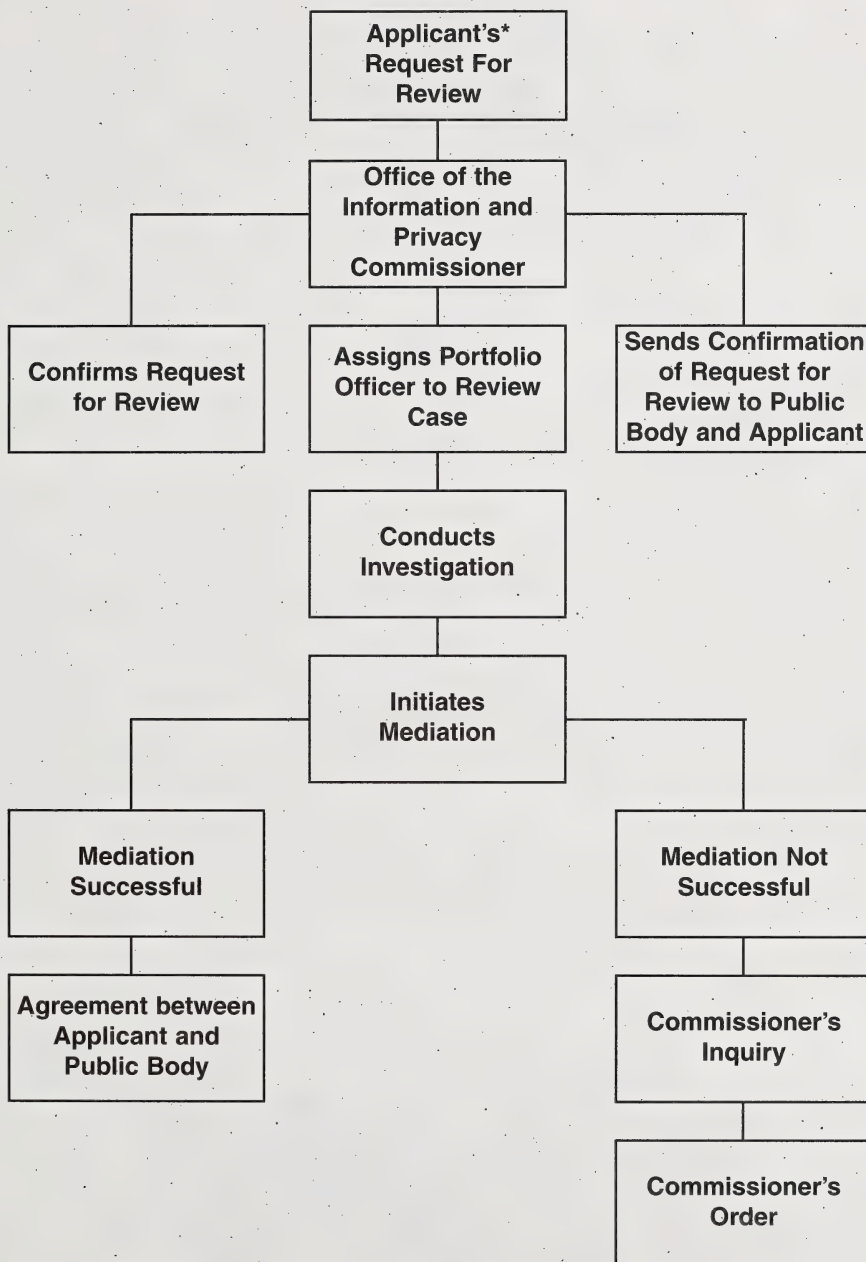
- deal with requests for review of decisions of local public bodies
- assist local public bodies in preparing to comply with the Act

IPC will also expand its communications strategy to include local public bodies.

Furthermore, IPC will continue to require resources to comment on legislative schemes and the “paramountcy” of the Act over other legislation.

Finally, section 91 of the Act stipulates that a Committee of the Legislative Assembly must undertake a review of the Act within three years of the Act coming into force. IPC anticipates that it will be involved in that review.

The Process: Request for Review and Inquiry



* Applicant: a person who makes a request for information held by a public body or a person who is affected by a public body's release of that information.

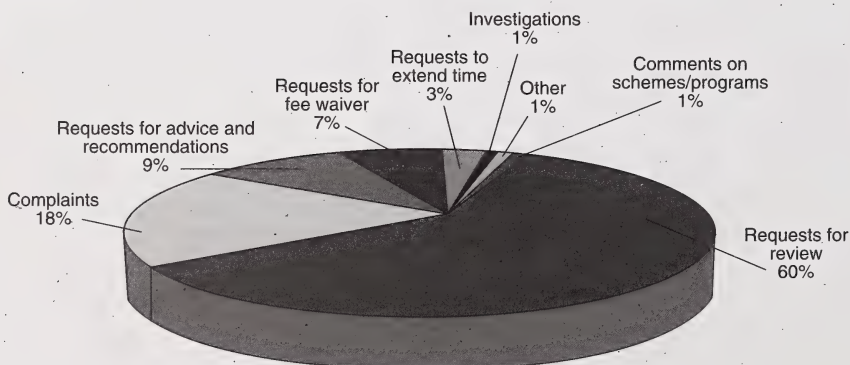
The First Six Months: A Retrospective

Statistical Information

Cases Opened (October 1, 1995 to March 31, 1996)

Type of Case	Relevant Section of the Act	Number of Cases
Requests for Review	s. 62	49
Complaints	s. 51(2)	15
Requests for advice and recommendations	s. 52	7
Requests for fee waiver	s. 87(4)	6
Requests to extend time	s. 13	2
Comments on schemes/programs	s. 51(1)(f)	1
Investigations	s. 51(1)(a)	1
Other	—	1
Total		82

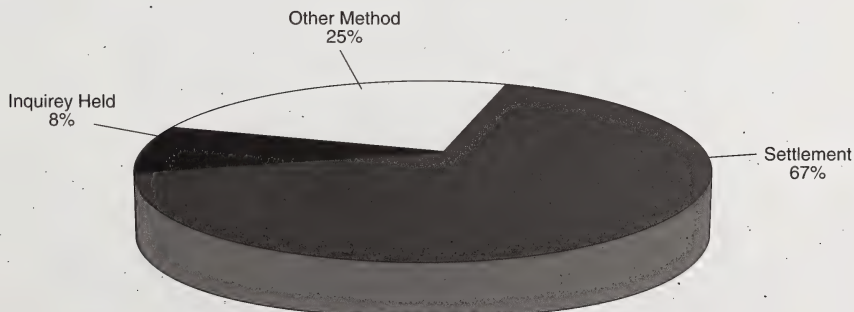
**Cases Opened
(by Type of Case)**



Cases Closed
(October 1, 1995 to March 31, 1996)

Type of Case	Closing Method			Total
	Settlement	Inquiry Held	Other Method	
Requests for Review	7	1		8
Complaints	6			6
Requests for advice and recommendations			3	3
Requests for fee waiver	3	1		4
Requests to extend time			2	2
Comments on schemes/ programs				
Investigations				
Other			1	1
Total	16	2	6	24

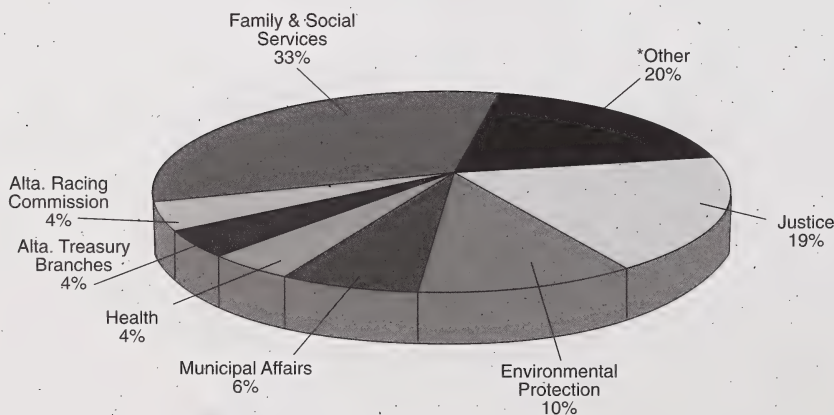
Cases Closed
(by Closing Method)



Requests for Review (October 1, 1995 to March 31, 1996)

Public Body	Number of Requests
Agriculture, Food & Rural Development	1
Alberta Energy & Utilities Board	1
Alberta Health Facilities Review Committee	1
Alberta Racing Commission	2
Alberta Treasury Branches	2
Credit Union Deposit Guarantee Corporation	1
Economic Development & Tourism	1
Environmental Protection	5
Family & Social Services	16
Federal & Intergovernmental Affairs	1
Health	2
Justice	9
Labour	1
Municipal Affairs	3
Transportation & Utilities	1
Treasury	1
Workers' Compensation Board Appeal Commission	1
Total	49

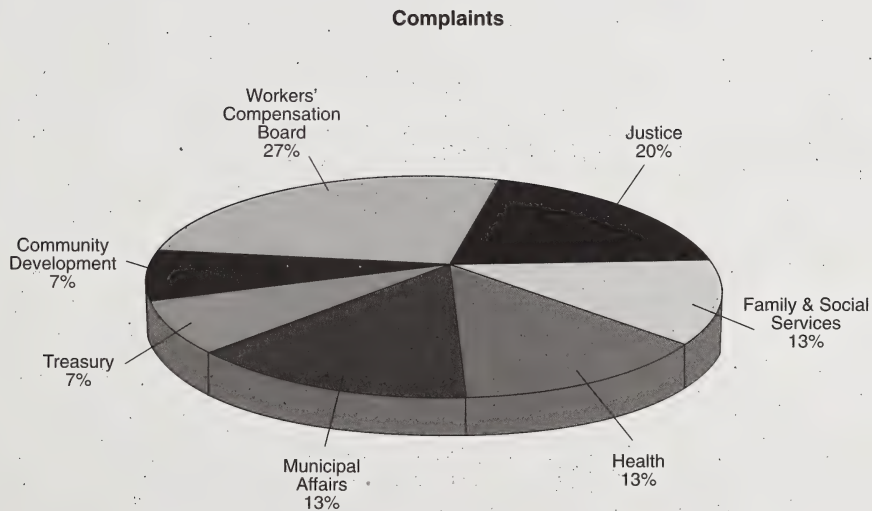
Requests for Review



*Public bodies representing 2% or fewer requests for review.

Complaints (October 1, 1995 to March 31, 1996)

Public Body	Number of Complaints
Community Development	1
Family & Social Services	2
Health	2
Justice	3
Municipal Affairs	2
Treasury	1
Workers' Compensation Board	4
Total	15



Direct Deposit of Pensions

Following a pensioner's complaint about having to provide personal information to Alberta Pensions Administration so that a direct deposit of the pensioner's benefits could be made, the Commissioner suggested to the head that implementation should be delayed until a better communications plan could be established. Alberta Pension Administration agreed, and provided IPC with a revised document that better explained the benefits and the security safeguards relating to direct deposit.

Use of Social Insurance Numbers

IPC received a complaint that a public body, which was not yet subject to the Act, was displaying Social Insurance Numbers on time cards in order to identify employees. When contacted by IPC, the public body said that it would make a change to its system.

Release of Private Information

After IPC informed a public body about concerns over release of information to third parties, the public body set up an internal committee to review all procedures in order to minimize the amount of personal information released inappropriately.

Decision to Refuse Access Upheld

The Information and Privacy Commissioner upheld the decision of the Department of Justice to refuse an applicant access to records relating to the maintenance enforcement program.

The Commissioner agreed with the head of the public body that the Department was required to keep those records confidential under section 11 of the *Maintenance Enforcement Act* and section 5 of the *Freedom of Information and Protection of Privacy Act*.

The Commissioner found that the confidentiality provisions of the *Maintenance Enforcement Act* must be read in such a way as to contemplate the possible harm that could result to the maintenance enforcement program if confidential information in the Director's records was accessible. Read in that way, those confidentiality provisions operated as a prohibition to disclosure under section 5 of the *Freedom of Information and Protection of Privacy Act*. This was sufficient to justify the Department's decision to refuse access.

Request to Excuse Fees Denied

The Information and Privacy Commissioner turned down a request by Dr. Michael Percy, MLA, to excuse payment of the \$25.00 initial fee for a request for records under the *Freedom of Information and Protection of Privacy Act*. In so doing, the Commissioner agreed with the head of the Treasury Department. The applicant, Dr. Percy (whose name may be released because there was a public inquiry into the matter), had sought Treasury's records related to Gainers Inc.

The Commissioner found that there were not sufficient grounds in the case for a waiver of the \$25.00 fee on the basis of either hardship, fairness or public interest. He hoped that, barring other grounds under the Act prohibiting access, cost alone would not prevent access to those records.

In a far-reaching decision, the Commissioner held that he lacked jurisdiction to give a blanket fee waiver to Members of the Legislative Assembly. He also fixed the burden of proof upon the person requesting the waiver in fee waiver cases.

Two significant parts of the ruling deal with criteria for determining what is in the public interest and the respective roles of the Commissioner and the heads of public bodies in excusing fees. As to public interest, the Commissioner offered some guidance to public bodies, which must apply the term. He stated that public interest depends on a number of factors and not just on the number of people immediately interested in or affected by a matter. The Commissioner decided that, unlike many parts of the Act where his role is to review the decision made by the head of a public body, section 87(4) gives him a discretion equal to that of the head of a public body in excusing fees. The Commissioner also stated his view of the operation of section 87(4) of the Act.

Class Lists

A public body sought advice and recommendations about release of a school's 1920-1957 class lists for the purpose of holding reunions. The public body was concerned that release would be an invasion of a third party's personal privacy because class lists could be interpreted as part of an individual's educational history. The Commissioner held that the lists were an historical record of those students who attended the school, and were not to be confused with the educational history of those students. As class lists were information available to the public at the time the class was active, the lists were releasable without making a formal request under the Act.

Productivity Plus Program

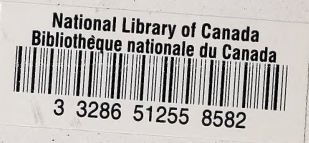
The provincial government instituted a program, known as Productivity Plus, in which a certain amount of money was made available to a department to reward employees whose efforts either saved the department money or increased efficiency. A public body wanted to know if information about Productivity Plus could be disclosed. The Commissioner held that only the following information could be disclosed: whether or not an employee was eligible for Productivity Plus; the total amount of money available, within the public body, for Productivity Plus; the number of persons awarded Productivity Plus payments, as long as the number of recipients was more than four; and the criteria used in making the award.

Document Received by Elected Official

An elected official asked the Commissioner to give advice and recommendations about releasing a document received by that official's constituency office. The Commissioner held that if the official received the document as a Minister of the Crown, the Act applied, and the official would have to consider the requirements of the Act relating to personal privacy and third party notice before releasing the document. However, if the official received the document as a Member of the Legislative Assembly, the Act did not apply, and the official was free to decide what to do with the document.

Budget

Item	1995 - 96	1996 - 97
	Actual Expenditures	Estimated Expenditures
Salaries, wages and employee benefits	\$283,646	\$582,317
Supplies and services	\$149,846	\$176,100
Total expenditures	\$433,492	\$758,417



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